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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
CESAR AGUSTIN CHAVEZ-OROZCO,)
)
Defendant)

CR No. 13-CR-00276 WHA

STIPULATION AND ~~[PROPOSED]~~ INTERIM
PROTECTIVE ORDER

Plaintiff, United States of America, by and through MELINDA HAAG, United States Attorney for the Northern District of California, and Suzanne B. Miles, Assistant United States Attorney for the Northern District of California, and the defendant, Cesar Agustin Chavez-Orozco, and his attorney Steven Kalar, hereby stipulate and agree as follows:

WHEREAS the defendant is charged in a one count Information charging violations of Title 18, United States Code, section 2252(a)(4)(B). In connection with this Information, the United States is in possession of computer media, materials, and property that it alleges constitute and/or contain images and/or videos of child pornography.

WHEREAS pursuant to Title 18, United States Code, section 3509(m), notwithstanding Fed. R. Crim. P. 16, courts are required to deny defense requests to copy, photograph, duplicate, or otherwise

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1 reproduce any property or material constituting child pornography if the United States makes the
2 property or material reasonably available to the defendant and provides ample opportunity for the
3 defense to examine it at a government facility. 18 U.S.C. § 3509(m).

4 WHEREAS in order to comply with Title 18, United States Code, section 3509(m), and to allow
5 the defendant the greatest opportunity to prepare an effective defense in preparation for trial in this
6 matter, the United States and defendant agree that disclosure of the alleged contraband materials on the
7 seized computer media are subject to the following restrictions:

8 IT IS HEREBY STIPULATED AND AGREED:

9 1. The provisions of this Interim Protective Order apply to computer media, materials, and property
10 that the United States alleges constitute and/or contain images and/or videos of child pornography
11 (“alleged contraband materials”). Without conceding that each image and/or video within the alleged
12 contraband materials constitutes child pornography, the defendant agrees that the provisions of this
13 Interim Protective Order apply to the alleged contraband materials. In the event of a dispute as to
14 whether a specific image and/or video constitutes child pornography, the defendant agrees that the
15 provisions of this Interim Protective Order apply unless and until the counsel for the United States
16 agrees in writing that a specific image and/or video is not child pornography or the Court enters an
17 Order to that effect.

18 2. The following individuals (the “defense team”) may obtain and examine the alleged contraband
19 materials under the conditions set forth herein for the sole purpose of preparing the defense and for no
20 other purpose:

- 21 a. Counsel for defendant;
- 22 b. Persons employed by defense counsel who are assisting with the preparation of the
23 defense;
- 24 c. Defendant, but only in the presence of his/her attorney;
- 25 d. Any expert retained on behalf of the defendant to assist in the defense of this matter;
- 26 e. Any investigator retained on behalf of defendants to assist in the defense of this matter.

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1 3. The United States shall make one forensic copy of all seized computer media (“defense hard
2 drive”) for the defense team. The defense hard drive will be configured in a format requested by the
3 defense team, provided that the tools required to configure the hard drive in the requested format are
4 known to and available to the United States. The defense hard drive shall be made available in a private
5 room at the offices of the United States Attorney, 450 Golden Gate Avenue, San Francisco, CA, 94102,
6 or any other location agreed upon by the parties (the “examination room”). The defense hard drive
7 shall remain in the examination room at all times and shall not removed from the examination room by
8 any member of the defense team. The defense team will have access to the examination room during
9 business hours, or on any other practicable terms that can be agreed upon by the parties, and will be
10 escorted to and from the room by counsel for the United States or a person designated on his/her behalf.
11 While the defense team is reviewing the defense hard drive, no agents of the United States will be
12 permitted inside the examination room, except in the event of a building emergency that requires
13 immediate access to the examination room.

14 4. The examination room will have land-line phone access and a computer workstation that meets
15 the minimum system requirements for the defense team to view the alleged contraband materials and/or
16 install software for forensic analysis of the defense hard drive. The computer workstation provided by
17 the United States shall not be connected to the Internet or to any other computer network. The defense
18 team will be permitted to bring into the examination room whatever hardware, software, books, or
19 records it believes necessary to conduct the examination, including a computer on which it may conduct
20 a forensic analysis of the defense hard drive. Any computer brought in by the defense team and used to
21 conduct an examination of the defense hard drive shall not be connected to the Internet or to any other
22 computer network. The defense team will also be permitted to bring in and use a computer that provides
23 internet access at its own expense, provided that any computer used to provide access to the internet is
24 not connected to the computer used to examine the defense hard drive. The defense team will be
25 permitted to leave the computer work station provided by the United States and /or its own computer
26 processing the defense hard drive in its absence. While a computer used by the defense team is
27 processing the defense hard drive in the absence of the defense team, no agents of the United States will

1 be permitted inside the examination room, except in the event of a building emergency that requires
2 immediate access to the examination room. At the conclusion of defense team's use of the examination
3 room, the workstation provided by the United States will be re-imaged. Neither the United States nor its
4 agents will review the defense team's configurations on the workstation at any time.

5 5. If agreeable to all parties and practicable, a copy of the defense hard drive may be stored in a
6 locked or restricted location designated by the United States for subsequent examination by the defense
7 team, so that the United States will not have to reimage the defense hard drive for each examination by
8 the defense team. The integrity of this hard drive may be verified by the use of a container sealed with
9 tamper-evident evidence tape. When the defense team has advised counsel for the United States that it
10 has completed its examination of the defense hard drive, the United States will re-image the hard drive
11 to remove all data from the hard drive. Neither the United States nor its agents will review the defense
12 team's configurations on the defense hard drive at any time.

13 6. The defense team shall not make copies of and shall not remove any images or videos from the
14 alleged contraband materials without further Court Order. This prohibition includes (1) printing images
15 and images from videos onto paper and (2) duplicating images and videos in any digital format; (3)
16 carrying images and videos off-site from the examination room; and (4) sending images and videos off-
17 site electronically. Non-image files such as word processing files, emails, and other text files may be
18 duplicated to the extent necessary to prepare the defense of this matter but only after the person
19 duplicating the material has confirmed that the file does not contain any embedded image or video files.
20 The defense team may remove printed notes and/or reports provided that the person seeking to remove
21 the notes and/or reports has confirmed that the notes and/or reports do not contain any embedded image
22 or video files.

23 7. Prior to receiving access to the materials on any occasion, the defense team members involved in
24 that examination shall sign a copy of this Certification to be filed with the Court acknowledging that:

- 25 a. S/he has reviewed the Order;
- 26 b. S/he understands the contents;
- 27 c. S/he will only access the defense hard drive for the purposes of preparing a defense;

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1 d. S/he will not access the defense hard drive from any computer that is connected to the
2 Internet or any local network;

3 e. S/he will not remove the defense hard drive or any alleged contraband materials from the
4 examination room; and

5 f. S/he understands that failure to abide by this Order may result in sanctions by this Court
6 and in state or federal criminal charges for possession, transportation, receipt, or distribution of
7 child pornography.

8 8. Upon conclusion of any examination, the defense team members involved in that examination
9 will certify in writing, to be filed with the Court, that s/he has not copied and has not removed the
10 defense hard drive and/or any alleged contraband materials from the examination room. Except when a
11 member of the defense team involved in that examination fails to provide this certification, no employee
12 of the United States will examine or acquire in any fashion any of the items used by the defense team to
13 conduct its analysis. If a member of the defense team fails to certify that s/he has not copied and has not
14 removed any alleged contraband materials, the United States may inspect or examine the defense hard
15 drive and any computer and computer media used by the defense team to ensure that contraband has not
16 been removed.

17 9. In the event that the defense team inadvertently removes any alleged contraband materials, it
18 shall immediately inform counsel for the United States and return it to him/her within 24 hours.

19 10. This Stipulated Order is a negotiated procedure by the parties in this case. It does not constitute
20 a concession or waiver by the United States regarding discovery procedures generally for providing
21 access to child pornography under Title 18, United States Code, section 3509(m). It also does not
22 represent a stipulation by the defense team conceding the constitutionality of Title 18, United States
23 Code, section 3509(m). This Stipulated Order will permit the parties in the present case to avoid
24 litigation regarding Title 18, United States Code, section 3509(m) but does not represent a waiver or
25 concession in other or future cases.

26 11. A copy of this Stipulation and Interim Protective Order shall be maintained with the alleged
27 contraband materials at all times.

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12. Any disputes concerning this Stipulation and Interim Protective Order shall be resolved by this Court only after counsel for the United States and defendant have first conferred and attempted to resolve the dispute.

SO STIPULATED:

MELINDA HAAG
United States Attorney

DATED: May 21, 2013


/s/
SUZANNE B. MILES
Assistant United States Attorney

DATED: May 21, 2013

/s/
STEVEN KALAR
Attorney for Defendant's Name

SO ORDERED.

DATED: May 22, 2013.


HONORABLE WILLIAM ALSUP
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)

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Plaintiff,)

CERTIFICATION TO INTERIM PROTECTIVE
ORDER

v.)

CESAR AGUSTIN CHAVEZ-OROZCO,)

Defendant)

The undersigned acknowledges that he has received a copy of the Interim Protective Order in the matter of United States v. Cesar Agustin Chavez-Orozco, 13-CR-00276 WHA, and has read, understands, and agrees to the terms of the Stipulation and Interim Protective Order, and hereby submits to the jurisdiction of the United States District Court for the Northern District of California for the purposes of enforcement of the terms and punishment of any violations thereof.

Date: _____

Name:

Title:

Having completed an examination of the defense hard drive, I hereby certify that I have not copied and have not removed the defense hard drive and/or any alleged contraband materials from the examination room.

Date: _____

Name:

Title:

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